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THE TORONTO-DOMINION BANK

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May 23, 1995

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The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Petition for Limited Reconsideration of the Fifth Memorandum Opinion and Order, PP Docket No. 93-253 - Ex Parte Comments (Rule§1.419 (b))

Dear Chairman Hundt:

The Toronto-Dominion Bank ("TD" or "Toronto Dominion") supports the petition for reconsideration NationsBank filed in the referenced proceeding, as well as NTFC Capital Corporation's comments.

TD operates as a commercial bank in the US and has over 11 years of experience in financing paging and cellular companies and currently has $1 billion in loan commitments outstanding to those industries in the US. TD was an early lender to McCaw Cellular Communications, Inc., and served as agent for that company on its $4.0 billion in bank financings until the firm was acquired by AT&T last year. TD is agent or co-agent on fourteen of the seventeen syndicated bank facilities in the US cellular industry. In addition, Toronto Dominion has agented paging industry bank facilities in the US since 1984, is agent on the two largest paging credit facilities (including Paging Network, Inc.) and is a lead lender on the third largest.

As arguably the leading arranger and provider of bank debt to the wireless communications industry in the United States, Toronto Dominion is following the emerging PCS industry (both broadband and narrowband) very closely. We hold a favorable view of the industry's prospects, and believe that the increased competition being created by the FCC's spectrum auctions will help fuel growth in demand by providing consumers with lower prices and more diverse product offerings. Further, TD has been engaged by a variety of clients to review financing strategies to fund the building and operation of PCS networks.

TD would like to consider financing for designated entities ("DE's") that obtain licenses in the

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Federal Communications Commission's broadband PCS auctions. Before financing a DE, however, Toronto Dominion needs assurances that it will have the same rights and remedies available for collecting our loans to PCS companies as we do with our cellular and paging clients. These would include the sale of the company or its assets. When TD began lending to the cellular industry, the licenses and supporting assets were openly traded and, thus, had established market values. Demonstrable market value of cellular licenses is important as, normally, in the event a borrower goes into financial distress and defaults on its loan, a bank's remedies include selling some or all of the borrower's assets to either recapitalize the borrower or repay the loan.

There are three areas in the current rules that concern the banks: (1) The limitations on transferability of the DE awarded licenses; (2) the ranking and term of the FCC financings; and (3) the lack of a "standstill" period in which the license winner, or the banks in its place, could take actions to correct or cure an event of default.

A Commission prohibition against license transfers by DE's in the first three years and to non-DE's within five years would (1) artificially limit the market and therefore the value of the borrower's most significant asset, the license, to the detriment of the DE's and their creditors (including the FCC); and (2) prevent banks and other secured lenders from exercising their rights to protect their loans. If the FCC does not allow the transfer of licenses to non-DE's in at least a financial distress situation, the Commission will prevent or at least severely limit a bank's ability to make loans to DE's.

The FCC financing to the DE's, as the rules currently stand, would rank structurally senior in right of payment to any bank debt. Further, the repayment begins prior to the maturity of the bank loan (typically 8-9 yrs.) and therefore the banks would ultimately be financing the repayment of the FCC installment credit. Typically banks only allow their funds to be used to develop and build communications systems as that ultimately enhances asset value. Further, in an "event of default" where the FCC claim ranked ahead of the banks, the lenders' ability to recover loan proceeds would be in doubt. TD would suggest that, at a minimum, some form of collateral sharing be considered. Again, given the current circumstances banks will be unwilling to provide loans to DE's.

In transactions where banks are not sole lenders they typically require a standstill period during which the other lenders would be notified of default but would not take action for a specified amount of time. Further, in financing companies whose right to operate, and therefore collect revenue, is based upon a contract or set of conditions to be met, the banks typically require the right to cure a default themselves. TD would therefore suggest that the FCC agree to a standstill period during which the lenders could choose to remedy any FCC complaint against the license holder.

Without such standstill and cure provisions, particularly given restrictions on free transfer and the FCC's structurally superior position, it is difficult to envision DE's being able to attract bank capital.

Our experience in wireless telecommunications lending has demonstrated that it involves significant risks. Many owners of RSA cellular licenses defaulted on those licenses or were unable to raise sufficient equity capital to complete a buildout and meet a viable business plan. In paging, many companies underestimated their capital needs and the competitive environment. Despite the risks in financing those businesses Toronto Dominion has never lost money in lending to the wireless telecommunications industry, and we believe that this is because we have required that assets be freely transferable in the case of an unexpected financial mishap.

PCS, even more than earlier wireless services, faces daunting challenges including: uncertainty of market acceptance; large capital requirements for build-out; implementations of new technologies; and competition from several well capitalized competitors - both wireless and wireline. The current FCC rules clearly try to incent entrepreneurs to compete with established players. Such competition will fuel growth in demand, benefitting both consumers and the economy, while speeding development of important telecommunications services. However, these same rules will, we believe, virtually eliminate the entrepreneurs' access to bank debt financing, and to date have also hampered DE's ability to attract equity capital. The effect shall be to reduce the number of DE's who would otherwise be eligible to bid, or post bidding, construct and operate viable networks.

We believe that it would be helpful for the FCC to work with leading communications banks such as Toronto Dominion, in order to develop financing structures that will allow DE's to access the equity and debt markets, while preserving the FCC's right to receive full payment for the licenses. Therefore as part of the referenced rule making, Toronto Dominion recommends that the Commission amend its rules to achieve the following: 1) that in the event of default by a DE, the Commission will allow transfer of a license to a non-DE if a DE does not acquire the license within 180 days; 2) that the FCC will agree to a 365 day standstill in the event of a default; 3) that the term of the FCC financing will be ten years with interest only to be paid until maturity; and 4) that the FCC financing will rank pari passu in right of payment with the banks. (An "event of default" is a term of art which the Commission could adopt as a known legal standard and, in doing so, establish the degree of certainty which lenders would need to know exists before making loans to a DE.)

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Toronto Dominion recognizes that the Commission has taken great care to craft rules that encourage DE's to start and operate PCS companies. Unfortunately, the aforementioned provisions of these rules will inhibit or even preclude funding of DE's that will be vital in order to build and grow these businesses. Therefore, on behalf of Toronto Dominion and in conjunction with NationsBank we request that the Commission give strong consideration to these issues and recommendations. We would be happy to meet with the Commission to discuss these issues in more detail.

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Yours sincerely,

Ian S. Crowe
Managing Director
Communications Finance

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cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan P. Ness
Mr. William F. Caton
Ms. Regina M. Keeney
Mr. Donald H. Gips
Mr. Andrew E. Sinwell
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